

**GRANT COUNTY
LAND USE HEARING EXAMINER**

IN THE MATTER OF

P20-0053
Patten

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND CONDITIONS
OF APPROVAL**

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on June 4, 2020, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application for a variance to alter the 20-foot front yard (north and east lot lines) setback from the shoreline access road/driveway for the location of a residence. The building would encroach approximately seven and one-half (7.5) feet into the front yard/road setback maintaining a twelve and one-half (12.5) foot setback. Further review of the proposal has indicated that the roof overhang extends beyond the 7.5 feet encroachment increasing the needed distance for the variance. The overhang will extend 11'-4" into the front yard or road setback.
2. The Applicants are James and Brenda Patten, 116 South 11th Avenue, Yakima, WA 98902. The designated contact is Eric Hess, Indomus Architects, 3213 Whalley Place West, Seattle, WA 98199.
3. The site address of the subject parcel is located at 9130 Goodrich Road SE, Moses Lake, WA 98837. The subject parcel is a portion of Lot 34, Pelican Point Addition No. 1, located in a portion of the Northwest quarter of Section 3, Township 18 North, Range 28 East, WM and the Southwest quarter of Section 34, Township 19 North, Range 28 East, WM, Grant County, WA (Parcel #12-0762-000).
4. The zoning for the property is Urban Residential 2.
5. The zoning for neighboring parcels Urban Residential 2.
6. The Comprehensive Plan designation for the subject property is Residential, Low Density.
7. Pursuant to and in compliance with Grant County Code § 24.08, a critical areas review of the project area was conducted as part of the application process for this proposal. The subject parcel was found to be within 200 feet of the shoreline of the Columbia River. However, the subject parcel is not a waterfront property. There is a parcel in between the subject parcel and the river. The proposed residence is outside of the sixty-five (65) foot required riparian buffer and building setback line that is required in the Shoreline Residential shoreline designation.

8. A Public Notice containing information on this project was published in the Columbia Basin Herald on December 6, 2019, was mailed to property owners within 300 feet of the subject property, and was posted on the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment.

<i>Agencies Notified</i>	<i>Response Received</i>	<i>Agencies Notified</i>	<i>Response Received</i>
Grant County Building Official	None	Grant County Sheriff's Office	None
Grant County Fire Marshal	2/27/2020	Grant County Treasurer's Office	None
Grant County Health District	None	Grant County Fire District #03	None
Grant County Public Works Department	2/27/2020	Grant County PUD	None
Grant County Assessor's Office	2/27/2020	Noxious Weed Control Board	None
Grant County Emergency Management	None	U.S. Bureau of Reclamation	None
Grant County Auditor	None	Quincy Columbia Basin Irrigation District	None

9. The following is a summary of comments received:

9.1 Grant County Assessor's Office:

- 9.1.1 Parcel 12-0762-000 is a 24,829 square foot lot of land only, the owners are James and Brenda Patten; no issues.

9.2 Grant County Fire Marshal:

- 9.2.1 No adverse comments or concerns about this project

9.3 Grant County Public Works:

- 9.3.1 An approach permit shall be obtained for County Road access.

10. Public Comments:

- 10.1 Pelican Point Community Association: We are elected, volunteer Board Members of Pelican Point Community Association (PPCA) and represent approximately 340 homeowners. We do not oppose the 12.5' setback from the access road, provided the land owner does not leave unattended vehicles in the gravel driveway that would impede our member's travel to and from our dock. It is important to note that we have occasional use of the access road by Fish and Wildlife, Grant County Fire District 5 and Grant County Sheriff Office first response vehicles/watercraft when response is needed at the south end. It is our assumption that the new owners of Lot 34 will use the access road for travel to and from their residence. Please be advised that the roadway is only wide enough for 1 way traffic, so the smallest rig backs up when vehicles meet going in opposite directions.

- 10.2 PPCA has what we believe are legitimate concerns and suggestions that are listed below:
 - 10.2.1 The landowner will maintain the hillside and drainage ditch on the east side of their property to preserve the integrity of the access road.
 - 10.2.2 The landowner will repair any access road damage caused by construction and related commercial vehicles.
 - 10.2.3 The landowner will mitigate any potential surface water pooling caused by their foundation interrupting the ground water flow.
 - 10.2.4 The landowner is not opposed to discuss cost sharing for chemical spray and gravel maintenance for that portion of the road they use to get to their property.
 - 10.2.5 That both parties abide by rules set forth by the latest court agreement and will notify the other for resolution and potential mitigation.
11. The application was determined to be technically complete on February 26, 2020.
12. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application and Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
13. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. The site does include wetland areas. Subject to the report provided by Ecosystems North West and compliance with the mitigation measures discussed in said report the proposal will not have a significant impact on those wetland areas.
14. The proposal site is located in the Moses Lake UGA Zoning District.
15. Grant County Code 23.12, Table 1 requires a 20' front yard setback from the property line in the Urban Residential 2 zone.
16. The proposed variance would be for this parcel and this structure only.
17. The applicant originally indicated a 12'-6" encroachment into the road setback. Further review indicated that the roof overhang of the structure did extend further into the road setback and beyond the standard 2 foot allowed overhang (See Notes for Tables 1, 2 and 3, Note 24, UDC Chapter 23.12). This eave overhang will extend five feet beyond the front/side wall of the structure closest to the access road. The full encroachment to the road setback will measure 11'-4".
18. Special conditions and circumstances exist that are peculiar to the land such that literal interpretation and application of the provisions of GCC Titles 22, 23, and 24 would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of GCC Titles 22, 23, and 24.
 - 18.1 Applicants are seeking relief from the (20') twenty foot front setback from the gravel access easement. The same neighbors who have the right to use the gravel road have a large majority of their flat property to the west of the road, from 90% down to 67%.

- Lot 34 only has 50.1% of the lot within the curve of the easement. The gravel access easement not only bisects Lot 34, but turns leftward towards the Pelican Point Board Commons with a 125 degree turn also removing the use of the northern part of the property. This access easement impacts the leftover buildable area much more than on the other lots.
- 18.2 While the lots in Pelican Point appear similar in size, the shape of the lots makes it difficult to place structures. The topography of the subject parcel, the critical areas (wetlands) and the location of the access road all present prior to the current owners create special circumstances that leave a limited buildable area for a residence and garage structure.
19. Allowing the Variance will be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
- 19.1 The gravel easement progressively angles closer to the wetland as one travels from the south end of lot 38 to the lot 34 on the north end. The gravel access easement not only bisects Lot 34, keeping the houses on the same distance from the wetland would result in a decreased distance from the easement to the houses, especially at lot 34. Also the access easement road is allowed only for the residences of the 6 lots (lots 33-38, of which one family possesses two of the lots, 36 and 37). The use of the gravel easement is and will continue to be infrequent unlike that of a public road.
- 19.2 Granting of the proposed variance would be in harmony with the intent and spirit of GCC Titles 22, 23, and 24. The existing gravel access road was placed in its current location by previous owners of property in the development and was further confirmed by court order. Additionally, allowing the variance will not approve a use which is prohibited in the Urban Residential 2 Zoning District.
20. A variance is necessary for the preservation and enjoyment of a property right possessed by other property in the same vicinity or district, but which is denied to the property in question because of special circumstances on that property.
- 20.1 The same neighboring properties have a large majority of their flat property to the west of this easement, from 90% down to 67%. Lot 34 only has 50.1% of the lot within the curve of the easement. Again the curve of the access easement means that the front setback's impact is that much greater, as compared with lots 35-38.
- 20.2 The special circumstances of wetlands and the gravel access road placement on this property limit the building area on the subject parcel.
21. The special conditions and circumstances described in Criteria #1 above, are specifically related to the property and are the result of unique conditions such as specifically irregular lot shape, size, or natural feature, and the application of GCC Titles 22, 23, and 24, and not, for example, from deed restrictions or the applicant's own actions.
- 21.1 The steep eastern slope of the lot is the reason for the final location for the gravel access easement, and due to the location of this easement and the 125 degree turn to the northwest reduce the allowable building area. While the location of the easement could be deemed as a deed restriction, it is only a result of the topography and the desire to have an easement to access the Pelican Point boat commons.

- 21.2 The shape and size of the lot limit the buildable area of the lot. The placement of the gravel access road and the wetlands areas and associated buffers additionally limit the buildable area. The gravel access road was built previous to the current owner purchasing the property.
22. The granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Chapter to other lands, structure, or buildings under similar circumstances.
- 22.1 The proposed house would ordinarily be allowed on the other properties and is not overly large or out of proportions with the neighbor's. The house straddling lots 36 and 37 appears to have a footprint of over 4,200 s.f. It also has a second story. The proposed house on lot 34 will have a footprint including the elevated decks of 2,280 s.f., substantially smaller.
- 22.2 Granting of the variance requested will not confer on the persons seeking the variance any special privilege..
23. The variance requested is the minimum necessary to afford relief.
- 23.1 The main east (front) side of the house encroaches less than (2') feet into the setback. The largest encroachment into the setback occurs at the NE corner of the house where the easement curves towards the boat commons. The encroachment at this corner is (6'-0") six feet and at the stairs down to grade is approximately 8'-3" at the bottom of the stairs, at (7') seven feet at a point where the stairs is 3'-6" tall.
- 23.2 The applicant has proposed a 2,280 square foot single family residence. This residence is consistent with home in this area. The front setback is the minimum distances necessary to afford relief.
24. The requested variance will not create significant impacts to critical areas and will not be materially detrimental to the public welfare, injurious to the right of other property owners in the vicinity, or contrary to the public interest.
- 24.1 The back of the house and elevated decks are outside of the (50') fifty-foot wetland setback area. Additionally, this entire wetland setback will be mitigated by native plants per Ecosystems North West report. The street side setback will be mostly around (18') eighteen feet with the exception of the NE corner of the house. Along the north side of the house, the setback maintained at (20') twenty feet.
- 24.2 Wetlands, which are critical areas were found to be present on the parcel. Subject to the mitigation measures proposed in the wetland assessment and report, no significant impacts will be caused. The variance if approved would not be detrimental to public welfare, injurious to the right of adjacent property owners and would not be contrary to the public interest if it can be constructed as required by County Code, International Building Code and International Fire Code. The structure has not yet been reviewed for compliance with said codes.
25. The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.

- 25.1 The single family residence is consistent with the zoning and spirit of this development.
- 25.2 The variance will not allow a use prohibited in the Urban Residential 2 zone.
26. An open record public hearing after due legal notice was held on June 4, 2020.
27. Appearing and testifying at this hearing was Eric Hess, Indomus Architects, the designated agent for the owners/applicants, James and Brenda Patten. Mr. Hess testified that he was the agent of the applicant and was authorized to appear and speak on their behalf. Mr. Hess indicated that all of the proposed conditions of approval were acceptable to the applicant. Mr. Hess indicated that project designs have been made to eliminate surface water accumulation on the property. The house will be on pilings and the garage will be on a slab with a primitive foundation set on gravel. Regarding the cost of maintenance of the access road, Mr. Hess's understanding is that there had been a prior agreement that required the Pelican Point Homeowner's Association to pay all costs of maintenance and improvements of this road. Mr. Hess assured that the applicant would not interfere with the easement access to the lake.
28. Also testifying for the applicant was Brenda Patten. Ms. Patten is one of the property owners. She indicated that she is looking forward to building their home on this property and they will respect the easement area and try to be the best neighbors possible.
29. Testifying from the public were the following individuals:
- 29.1 Elton Miller. Mr. Miller testified as president of the Pelican Point Homeowner's Association. Mr. Miller testified consistent with his letter submitted prior to the hearing. Mr. Miller indicated that the agreement referenced by Mr. Hess did not include the applicant's specific property. However, they were hopeful that they would be able to work with the applicants.
- 29.2 Dennis Conley. Mr. Conley lives above the applicant's property. He had no concerns except that there are many boats with trailers that come down the easement road, and therefore, it is very important to keep the easement road there and unobstructed for this traffic.
30. The Hearing Examiner has reviewed and considered the application materials and the comments received for the proposal.
31. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. The proposal conforms to the standards specified in Grant County Code §§ 24.08 and 25.08.060(b).

4. The use will comply with all required performance standards as specified in Grant County Unified Development Code §§ 25.04 and 25.08.
5. Granting of the proposed variance would be in harmony with the intent and spirit of GCC Titles 22, 23, and 24.
6. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Conditional Use Permit Application P20-0053 are hereby **APPROVED** subject to the following Conditions of Approval.

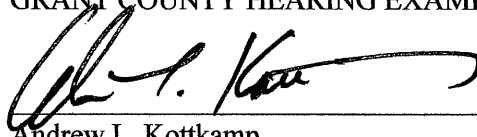
IV. CONDITIONS OF APPROVAL

All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns:

1. The landowner/applicant is responsible to determine if other permits and/or licenses will be required by other local, state, and federal agencies. The landowner/applicant shall acquire all such permits and/or licenses as required.
2. A Variance to the Development Standards as defined in GCC § 23.12 Table 3 in the Urban Residential 2 Zoning District has been granted in order to only allow construction of a single family residence and garage on parcel #12-0762-000 as depicted on a Site Plan submitted to the Grant County Development Services - Planning Division by the applicants on March 16, 2020 indicating the structure and overhand will be eight feet eight inches from the road. Any further development beyond the scope of this project as proposed, including changes to the development or any requests for additional construction, shall be reviewed by the Grant County Planning Department and may require other permitting.
3. The applicant shall comply with all requirements as deemed necessary by the Grant County Public Works Department, including, but not limited to:
 - 3.1 Approach permit shall be obtained for County Road access.
4. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Department, including, but not limited to:
 - 4.1 The development authorized by this Variance shall be completed within five (5) years of the date of permit approval or the permit shall become null and void. An extension of up to one (1) year may be granted by the Decision Maker if the permittee demonstrates good cause for an extension.
5. The applicant shall not interfere with access to the lake through the easement area on the applicant's property.

Dated this 5th day of June, 2020.

GRANT COUNTY HEARING EXAMINER

A handwritten signature in black ink, appearing to read "A. L. Kottkamp", is written over a horizontal line.

Andrew L. Kottkamp

EXCEPT AS PROVIDED BY GRANT COUNTY UNIFORM DEVELOPMENT CODE, SECTION 25.32.150, THE DECISION OF THE HEARING EXAMINER IS FINAL AND CONCLUSIVE UNLESS APPEALED TO THE GRANT COUNTY SUPERIOR COURT WITHIN TWENTY-ONE (21) DAYS AFTER THE ISSUANCE OF THIS DECISION AS PROVIDED BY RCW 36.70C.040 AND GRANT COUNTY UNIFORM DEVELOPMENT CODE, SECTIONS 25.32.160 AND 25.04.430.